



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Exhibits, Inc.

File: B-258979

Date: February 22, 1995

Arthur L. Friedman for the protester.
Sherry Kinland Kaswell, Esq., Department of the Interior,
for the agency.
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Evaluation of protester's proposal was proper where the reasons specified for excluding proposal from the competitive range were reasonably related to evaluation factors and subfactors, and other proposal preparation information set forth in the solicitation.
2. Allegations raised for the first time in the protester's comments on the agency's administrative report are untimely, since they were not raised within 10 working days after protester first knew of the bases for the allegations.

DECISION

General Exhibits, Inc. (GEI) protests the rejection of its proposal under Department of the Interior, Fish and Wildlife Service (FWS) request for proposals (RFP) No. FWS 10-94-017, for audiovisual elements for the Walnut Creek Wildlife Refuge, Prairie City, Iowa.

We deny the protest in part and dismiss it in part.

Award of a firm, fixed-price contract was to be made to the responsible offeror whose proposal was determined most advantageous to the government, price and other factors considered. There were three technical evaluation factors (each of which had subfactors): technical proposal, qualifications and relevant experience, and project management. The technical factors were more important than price.

Proposals were received from 11 offerors. The initial technical scores and proposed prices were as follows:

OFFEROR	TECHNICAL/PRICE RATING (500 possible points)	PROPOSED PRICE
A	369.5	\$1,229,855
B	322.2	1,204,527
C	330	1,268,871
D	305.2	1,235,103
E	245.8	1,547,773
F	239.9	1,310,509
G	237.7	1,196,559
H	227.8	1,245,771.77
I	197.2	1,948,230.45
J	188.2	1,642,285.80
General Exhibits	175	1,089,129

Only the four highest-rated proposals were included in the competitive range for discussion purposes; GEI's lowest-rated proposal was excluded. By letter dated September 29, 1994, FWS informed GEI that its proposal had been excluded from the competitive range for four general reasons:

"(1) Production approach relied too heavily on SOFTIMAGE technology. There was too much computer-generated material and not enough natural resources and live imagery for the type of project desired.

"(2) Production schedule deviates from industry practice--shooting was slated to begin before treatments, scripts and storyboards had been completed.

"(3) Laserdisk players specified were not the highest quality currently available.

"(4) Proposal was marred by grammatical errors."

GEI argues that the agency improperly rejected its proposal based on factors other than, and unrelated to, those stated in the RFP.

Where a solicitation has been issued informing offerors that certain criteria will be considered in evaluating proposals, the agency must adhere to those criteria in the evaluation.

See Questech, Inc., B-255095, Feb. 7, 1994, 94-1 CPD ¶ 82. In performing the evaluation, however, the agency may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. See AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83.

The reasons given for downgrading GEI's proposal clearly relate to the stated evaluation factors and subfactors. The first subfactor under the technical proposal factor was "[u]nderstanding the total scope of work and approach to complete the project as demonstrated in the Production Plan," and the third was "[c]reative and concept abilities as demonstrated in comments to the Creative Treatments." The first subfactor under the project management factor was "[a]bility to organize project as demonstrated by schedule," and section L specifically required a project management plan including a description of "how the offeror will fulfill the government's interest in overseeing the development of the audiovisual elements for all phases of work."

It should have been clear from these factors that the agency was going to evaluate both the technical approach taken in the production plan and the creative aspects of the proposal. This also should have been apparent from the fact that the RFP set forth a detailed description of the project requirements from both a technical and creative standpoint. For example, the work statement included a section entitled "Creative Treatment," describing the types of vignettes to be incorporated in the audiovisual presentation and, under that section, "Production Specifications" for the vignettes, stating that the vignettes "will be comprised of historic illustrations, photographs and films, contemporary still and moving video footage, and animation stand footage." We think considering the amount of computer-generated video proposed and the adequacy of the production schedule fell within these factors and work statement requirements. It follows that FWS properly rated GEI on the basis of these considerations.

The second technical proposal subfactor was "Quality of the proposed system designs and appropriateness of systems to deliver quality and reliable performance," and section L specifically required that proposals include "an equipment list and/or proposed system design for each audiovisual element." Again, it should have been clear from the subfactor and proposal requirements that the agency intended to assess the quality of the equipment proposed for the project. The agency's finding that GEI's proposed laserdisk player was not the highest quality available clearly relates to the equipment evaluation and therefore fell within the scope of the stated factors.

While the RFP did not expressly state that written communication would be evaluated, where a proposal is viewed as so poorly written that it portends difficulties in satisfactorily completing the contract, we think this type of weakness properly can be taken into consideration under factors that relate to the offeror's ability to accomplish the work. See Pannesma Co. Ltd., B-251688, Apr. 19, 1993, 93-1 CPD ¶ 333 ("sloppy proposal" that reflected a "casual approach" a proper consideration for evaluation). Doing so would seem particularly appropriate under a procurement such as this one, whose ultimate purpose is communicating a message to the public. In this regard, the agency expressed its concern as follows:

"Written documents will be an important means of communication throughout all phases of this project. Important written products will include treatments, scripts, progress reports, technical and production planning and directions, and captions."

In any event, the evaluation record shows that this aspect of the evaluation by itself had no determinative effect on the decision to exclude GEI's proposal from the competitive range. It therefore provides no basis for sustaining the protest.

GEI raises numerous additional arguments in its comments on the agency report. In particular, GEI challenges FWS's evaluation conclusions regarding its proposal. Our Bid Protest Regulations require that protests be filed no later than 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1994). When a protester initially files a timely protest and later supplements it with new and additional grounds of protest, the new allegations must independently satisfy our timeliness requirements. Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311. GEI knew the reasons for the rejection of its proposal when it received the agency's September 29 letter, but did not challenge the reasonableness of the agency's evaluation conclusions until it filed its comments on December 5, more than 10 working days later. The additional arguments therefore are untimely and will not be considered.

The protest is denied in part and dismissed in part.

Ronald Berger
 for Robert P. Murphy
 General Counsel